

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

**DIVISION FOUR**

MARCUS MCCOY,	)	No. ED99701
	)	
Movant/Appellant,	)	Appeal from the Circuit Court of
	)	the City of St. Louis
vs.	)	
	)	Honorable Julian Bush
STATE OF MISSOURI,	)	
	)	
Respondent.	)	Filed: April 15, 2014

Marcus McCoy (Movant) appeals the judgment of the motion court denying his Rule 29.15 motion for post-conviction relief after an evidentiary hearing. He contends that the motion court clearly erred in denying his claim that defense counsel was ineffective for: 1) failing to call Movant to testify at trial; 2) failing to include a claim in his motion for new trial; and 3) withdrawing a request for mistrial.

AFFIRMED.

Division IV Holds:

- 1) Counsel was not ineffective for failing to call Movant to testify as a witness at his second trial where counsel affirmed that he would have called Movant as a witness had Movant informed counsel that he wanted to testify and where counsel did not recall that Movant had informed him of a wish to do so.
- 2) Counsel was not ineffective for failing to preserve an issue for appellate review by not including the claim in a motion for new trial because a claim that counsel's inaction affected Movant's ability to appeal is not cognizable under Rule 29.15, except where fundamental fairness requires otherwise, and then only in rare and exceptional circumstances.
- 3) Counsel was not ineffective for withdrawing a motion for mistrial where the evidentiary record indicated that counsel did so at Movant's request.

We affirm the motion court's judgment.

Opinion by: Philip M. Hess, J.  
Lisa S. Van Amburg, P. J. and Patricia L. Cohen, J. concur.

Attorney for Appellant: Marcus P. McCoy, Pro Se

Attorney for Respondent: Dora A. Fichter

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